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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

PFS CORPORATION, Petitioner

v.

KENNETH B. TURNER, and
CHARLOTTE TURNER

Petition For Writ Of Certiorari
To The Supreme Court Of Alabama
No. 1931169

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

KENNETH B. TURNER and CHARLOTTE TURNER, *

Plaintiffs, *

vs. *

DEXTER MANUFACTURING CO., INC.; SHOAL SUPPLY CO., INC.; ET AL., *

Defendants. *

FILED
MAR 01 1994
BILLY YATES
CLERK, CIRCUIT COURT

Case No. CV-89-262-DWS

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PFS CORPORATION

After consideration of the Motion made by PFS for Summary Judgment, and upon review of the materials and arguments submitted in favor and in opposition to the Motion for Summary Judgment and, following oral argument by the parties as described in the Findings of Fact and Conclusions of Law, filed herewith, this Court is of the opinion that the Final Motion for Summary Judgment, filed by PFS Corporation, should be granted.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for Final Summary Judgment heretofore filed by PFS Corporation is granted and that Summary Judgment be and is herewith entered on behalf of PFS Corporation dismissing the Complaint of the plaintiff and all causes of action alleged by the plaintiff, and that judgment is herewith final.

Dated this 24th day of February, 1994.

BY COURT:

By:/s/Donald W. Stewart
Donald W. Stewart
Circuit Court Judge

IN THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

KENNETH B. TURNER and CHARLOTTE TURNER, *

Plaintiffs, *

vs. *

* Case No. CV-89-262-DWS

DEXTER MANUFACTURING CO., INC.; SHOAL SUPPLY CO., INC.; ET AL., *

Defendants. *

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE DISMISSAL OF DEFENDANT PFS

The above entitled matter coming on to be heard for oral argument before the Circuit Court for Etowah County, Alabama, the Honorable Donald W. Stewart presiding, on September 24, 1993; and the Court upon consideration of the pleadings, affidavits and argument hereinafter described makes and files the following Findings of Fact and Conclusions of Law in regard to the above-captioned action and, specifically, regarding the Motion of PFS Corporation for Judgment dismissing the plaintiffs' Complaint and all causes of action.

1. This action was commenced by the filing of a Summons and Complaint in the office of the Clerk of Courts for Etowah County, Alabama, on July 17, 1989. Defendant PFS Corporation (hereinafter "PFS") entered its appearance on November 14, 1989.

2. The plaintiff, Kenneth D. Turner, is an adult resident of the State of Alabama. His wife, Charlotte Turner, is also a plaintiff making derivative claims for loss of consortium and emotional distress as a result of the injuries suffered by her husband.

On or about April 7, 1987, plaintiff Kenneth Turner (hereinafter, "Turner") was employed as a transit truck driver by Mays Enterprises, Inc., at a mobile home plant located in Albertville, Alabama.

3. Plaintiff Turner was injured when the semi-tractor and trailer he was driving could not stop while traveling down-hill and thereupon the tractor and trailer were involved in an accident in which the plaintiff, Kenneth D. Turner, was severely injured. The plaintiff claims that he was injured, in part, because the semi-trailer braking system containing the mobile home had a defective or inadequate braking system. (See Plaintiffs' Complaint, paragraph 1).

4. The plaintiff contends that PFS undertook a responsibility to the plaintiff to require a safe braking system on the mobile home trailer chassis pursuant to a contract for design approval and plant inspection protocol entered into between PFS and Turner's employer, Mays Enterprises, Inc., the manufacturer of the mobile home transported by the plaintiff.

5. That plaintiff contends that his injuries were caused by either a defective braking axle on the mobile home trailer or by the failure of the trailer to have a sufficient number of braking axles. Plaintiff alleges that either the braking axle on the trailer home was defective in failing to stop the mobile home or in the alternative, PFS Corporation as a condition of its release of the HUD label should have specified greater braking capacity. (See Plaintiff's Complaint, paragraphs 7 and 8).

6. There is no allegation of any PFS contractual relationship with the plaintiff. PFS Corporation entered into an agreement for Design Approval Primary Inspection Agency Services with Mays Enterprises as of January 5, 1987. (See Rothman Affidavit, paragraph 5, and see Exhibit A attached thereto).

7. The PFS-Mays contractual agreement defined the design approval duties undertaken and performed by PFS for Mays Enterprises (hereinafter "Mays"). The purpose of the contract was

to regulate the use of the PFS label by Mays Enterprises. Under the contract, PFS became the agent of the United States Department of Housing and Urban Development (HUD) for the purposes of administering the rules and regulations promulgated by HUD regarding the production and sale of mobile homes. Those contractual rules and regulations governed when, how, and under what conditions the HUD label came to be affixed in mobile homes produced by Mays under the contract. These specifications and rules were identified in paragraph 7 of the contract which states as follows:

> "Manufacturer recognizes that PFS, as IPIA, shall be responsible for conducting representative inspections to assure that the Manufacturer is performing its Quality Control Program pursuant to and consistent with its approved Quality Assurance Manual, and to assure that whatever part of a mobile home is actually inspected by the IPIA is fully in conformance with the design and, as appropriate in Section 3282.362(a)1(iii), with the standards before a label is issued for or placed on that mobile home as set forth in said rules."

(See Rothman Affidavit, paragraph 8.)

8. The relevant PFS inspection certification requirements regarding the approval of the Mays mobile home transportation package provided, that on a mobile home trailer of the size and weight carried by the plaintiff in this action, the "1st axle [was] to be brake, all other axles may be brake or idler." (See Rothman Affidavit, paragraph 9 and attachments).

9. The regulations and specifications to which PFS approved the Mays transportation package under the HUD rules allowed Mays Enterprises to use and required PFS to approve "certified recycled axles." Additionally, the use of a single-braking axle did not contravene the Compliance Assurance Manual approved by PFS nor any Federal regulation concerning the construction of

mobile or manufactured homes and, therefore, was not in violation of any of the codes, regulations or rules for which PFS certified the Mays product. (See Rothman Affidavit, paragraph 13).

10. PFS has never tested or inspected the mobile home axle used on the trailer unit pulled by the plaintiff in this action, nor is has it been requested to do so, nor was PFS involved in the transportation of the mobile home. (See Rothman Affidavit, paragraphs 14 and 15).

11. The HUD regulation concerning the design of the mobile home transportation system, Section 3280.903(c), provides that a manufacturer may deviate from using multiple brake axles on a trailer if one of the alternative approval methods allowed by Section 3280.903(c) is followed. One of these manufacturing alternatives permits the manufacturer to certify in a letter that its transportation experience has "not experienced latent damage to structural, plumbing, mechanical, or electrical systems that would exceed the 1% maximum allowance allowed in section 3280.903 of the standards." PFS had received such a certification letter from Mays Manufacturing. (See Rothman Affidavit, paragraph 17).

12. The "1% maximum allowance" standard referenced in the preceding paragraph as specifically allowed by Section 3280.903 of the HUD standards and is the applicable standard which must be accepted by the design approval agency as proof of compliance with the HUD safety standard for transportation of mobile homes.

13. PFS did not prepare or produce any plans, drawings or other reports which defined the number or braking capacity of any axles used in the transportation of the mobile home transported by the plaintiff in this action. PFS had no responsibility for incorporating any safety device or feature into the axle described in the plaintiffs' Complaint because there is no such responsibility defined in the PFS-Mays Enterprise contract or in applicable HUD regulations referenced in the contract document.

14. The plaintiffs have submitted an affidavit from Harry

Edmondson which asserts, among other things, that "PFS did not perform any engineering analyses or any engineering calculations to determine whether one brake axle was sufficient to safely stop the mobile home as required by the HUD Standards." He further asserts that the use of one brake axle "was violative of good engineering practice." (See Edmondson Affidavit, paragraphs 3 and 7.)

CONCLUSIONS OF LAW

1. Summary Judgment is appropriate when there is no controversy on the factual basis of the suit and a resolution can be made as a matter of law. Alabama Rules of Civil Procedure, Rule 56(c)(3).

2. The plaintiffs have failed to raise an issue of fact regarding the undertaking of a responsibility by PFS to review the Mays Enterprises design package for safety in transportation beyond the explicit terms of the contract between PFS and Mays Enterprises and the HUD regulations therein specified.

3. The contract between PFS Corporation and Mays Enterprises provided for services to be rendered to Mays Enterprises pursuant to HUD regulations for manufactured homes as specified in Section 3280 of the Administrative Register. In the instant action, plaintiff Turner cannot support his cause of action against PFS because the Mays home and PFS certification of that home to HUD standards preempts any state or local rules in conflict with that regulation. Therefore, PFS in certifying the home to the requirements of 24 C.F.R. Sections 3280-3282, cannot be liable for the plaintiff's injuries as a matter of law. This is because the allegations set forth in the plaintiffs' Complaint attempt to place greater safety requirements upon the PFS inspection and certification process than those imposed under the Federal regulations.

4. 24 C.F.R. Section 3282.11, "Preemption and Reciprocity," provides that

(a) no state manufactured home standard regarding

> manufactured home construction and safety which covers aspects of manufactured homes governed by the Federal standard shall be established or continued in effect with respect to the manufactured home subject to the Federal standards and these regulations unless it is identical to the Federal standards." Therefore, the language of Section 3282.11 prevents the establishment, even by judicial decision and award of damages, of a stricter or different state standard for the transportation safety of a mobile home.

5. 24 C.F.R. Section 3280.904 authorizes specific requirements for

> [D]esigning the transportation system which section provides that braking design can be documented and determined by alternatives to engineering analysis which includes in section 3280.903(c)(2) acceptable documented evidence of actual transportation experience which meets the intent of this subpart.

The Mays transportation letter approved by PFS in this action constitutes "actual transportation experience which meets the intent of this subpart." The language of the subpart described in the previous paragraph is unambiguous. Therefore, this Court can, and does, determine that as a matter of law the approval by PFS of the transportation package with the certification of transportation experience by the manufacturer is in compliance with the code and, therefore, also in compliance with the PFS-Mays Enterprises contract.

6. The plaintiffs have failed to raise an issue of fact to support their assertion that PFS violated its contract to inspect for compliance with the HUD code provisions or that the Mays Enterprises design package designation of one brake axle on the trailer failed to meet the required HUD design specifications.

Dated this 24th day of February, 1994.

BY THE COURT:
By:/s/ Donald W. Stewart
Donald W. Stewart
Circuit Court Judge

FILED
MAR 01 1994
BILLY YATES
CLERK, CIRCUIT COURT

KENNETH B. TURNER, ET AL, * IN THE CIRCUIT COURT

PLAINTIFF(S), * OF ETOWAH COUNTY

VS.

* ALABAMA

DEXTER MANUFACTURING CO., INC., ET AL, *

DEFENDANTS. * Case No. CV-89-262-DWS

NOTICE OF RULING ON MOTION

Plaintiffs' Motion to Reconsider and Vacate judgment is hereby denied.

Done this 8th day of April, 1994.

/s/ Donald W. Stewart
Donald W. Stewart, Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the Counsel for the parties of record in this case on the 8th day of April, 1994.

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Romana Baker, Judicial Assistant

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Kenneth B. Turner v. PFS Corporation

1931169

SUPREME COURT OF ALABAMA

1995 Ala. LEXIS 407; CCH Prod. Liab. Rep. P14,439

October 13, 1995, Released

NOTICE: [*1] THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE ADVANCE SHEETS OF THE OFFICIAL REPORTER.

PRIOR HISTORY: Appeal from Etowah Circuit Court. (CV-89-262). Donald W. Stewart, TRIAL JUDGE.

DISPOSITION: REVERSED AND REMANDED.

COUNSEL: For Appellant: James H. Starnes and Valentina Gerdts-Hughes, of Roden, Hayes, Carter & Starnes, Birmingham.

For Appellee: Richard Rhea of Rhea, Boyd & Rhea, Gadsden. Rhea A. Myers of Wheeler, Van Sickle & Anderson, S.C., Madison, Wisconsin.

JUDGES: SHORES, Justice. Almon, Ingram, Cook, and Butts, JJ., concur. Maddox, J., dissents.

OPINION BY: SHORES

OPINION: SHORES, JUSTICE.

This case concerns whether the regulations and requirements of the Department of Housing and Urban Development ("HUD") preempt the plaintiff's state law tort claims alleging injury as a result

of the faulty design and manufacture of a mobile home. The trial court held that 24 C.F.R. § 3282.11 preempts all claims by the plaintiff and entered a summary judgment for the defendant, PFS Corporation. We reverse and remand.

The plaintiff, Kenneth B. Turner, was employed as a transit truck driver with Mays Enterprises. On April 7, 1987, he was rendered a paraplegic by personal injuries he sustained when the semi-tractor and manufactured home he was driving failed to stop and he ran into a culvert. The manufactured home was equipped with five axles, but only one was a braking axle. Turner sued PFS Corporation, which was licensed by HUD as a "design approval plant inspection agency" [*2] ("DAPIA") and as an "in-plant inspection agency" ("IPIA") to ensure that manufacturers complied with rules and regulations promulgated by HUD. Turner alleged that in approving the braking design of the subject manufactured home, PFS Corporation had acted negligently and/or wantonly and had violated HUD standards and good engineering practices.

A. Preemption

The HUD regulations at issue were promulgated pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401-5426 (NMHCSSA). The trial court agreed with the defendant PFS that the federal law preempts Turner's state law tort claims. Considering both the NMHCSSA and the HUD regulations, we hold that Turner's claims are not preempted.

Preemption is the exception to the general rule that federal law does not displace existing state law. Congress must clearly manifest a purpose to supersede the common law of the states for preemption to apply. Cipollone v. Liggett Group, Inc., 505 U.S. 504, , 112 S. Ct. 2608, 2617, 120 L. Ed. 2d 407(1992). When Congress enacts an explicit provision on preemption and that provision supplies a "'reliable indicium of congressional intent with respect [*3] to state authority,' . . . 'there is no need to infer congressional intent to preempt state laws from the substantive provisions' of the legislation." Cipollone, 504 U.S. at , 112 S. Ct. at 2618 (citations

omitted). In those circumstances, a court "need only identify the domain expressly preempted" by that provision. Id.

The express provision in the NMHCSSA, along with the explicit HUD regulation, defines the preemptive reach of federal regulation. See Scurlock v. City of Lynn Haven, Fla., 858 F.2d 1521, 1523 (11th Cir. 1988) (holding a city ordinance preempted by 24 C.F.R. § 3282.11); Woolridge v. Redman Homes, Inc., 792 F. Supp. 1469 (N.D. Tex. 1991); Shorter v. Champion Home Builders Co., 776 F. Supp. 333 (N.D. Ohio 1991). Section 5403(d) of the NMHCSSA provides:

"Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding the construction or safety applicable to the same aspect of performance of such manufactured [*4] home which is not identical to the Federal manufactured home construction and safety standard."

Turner has put forth no allegations, arguments, or evidence concerning any state standards regarding manufactured homes. His claims are founded in tort, but the claims are based on the theory that PFS Corporation negligently and/or wantonly failed to comply with the federal HUD standards. He does not attempt to place greater safety requirements upon PFS Corporation than those imposed under the federal regulations. Rather, his claims assert a failure to comply with the federal standards themselves.

Significantly, § 5409(c) of the NMHCSSA provides that "compliance with any Federal manufactured home construction or safety standard issued under this chapter does not exempt any person from any liability under common law." Read together, this section and § 5403(d) "preempt state law standards, but do not preempt most state law claims." Shorter v. Champion Home Builders Co., 776 F. Supp. at 337-38. See also Mizner v. North River Homes, [Ms. 66983, May 30, 1995]

S.W.2d , 1995 Mo. App. LEXIS 1019 (Mo.App. 1995) (finding no preemption of common law claims by the NMHCSSA).

The test [*5] for determining whether Turner's specific claims are preempted can be found in the preemption regulation n1 at issue here, 24 C.F.R. § 3282.11, n2 which, at the time of the events involved in this case, read as follows:

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - - -

n1 Federal administrative regulations have the same preemptive effect as federal statutes. Fidelity Federal Savings & Loan Association v. de la Cuesta, 458 U.S. 141, 73 L. Ed. 2d 664, 102 S. Ct. 3014 (1982).

n2 Paragraph (c) of § 3282.11 states in part that "no state may establish or keep in effect through a building code enforcement system or otherwise, procedures or requirements which constitute systems for enforcement of the Federal standards or of identical State standards which are outside the system established in these regulations or which go beyond this system to require remedial actions which are not required by the Act and these regulations." Paragraph (c) concerns the state's role as a HUD-licensed approval agency for enforcement of the NMHCSSA; therefore, this paragraph does not refer to state law tort actions.

- - - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - - -

[*6]

"(a) No state manufactured home standard regarding manufactured home construction and safety which covers aspects of the manufactured home governed by the Federal standards shall be established or continue in effect with respect to manufactured homes subject to the Federal standards and these regulations unless it is identical to the Federal standards."

. . . .

"(e) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act." n3

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n3 Because of amendments made in 1991, this paragraph (e) now appears as paragraph (d).

- - - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

(Emphasis added.) The regulation can be understood to address common law rules as well as [*7] legislative rules. See Cipollone v. Liggett Group, 505 U.S.
504, , 112 S. Ct. 2608, 2620, 120 L. Ed. 2d 407 (1992) (preemption of state"requirements or prohibitions" includes common law claims). Turner's claims are not preempted, however, because enforcing the federal standards through state tort law does not frustrate federal supervision of the industry. n4 The availability of tort claims may serve to increase compliance by the industry. Thus, only claims that impose different state standards are preempted. See also Woolridge v. Redman Homes, Inc., 792 F. Supp. 1469 (N.D. Tex. 1991) (no preemption under NMHCSSA of identical state standards).

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n4 The NMHCSSA provides no remedies sufficient to compensate a seriously injured person. See § 5410.

- - - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

B. The Summary Judgment Standard

Rule 56, A. R. Civ. P., sets forth a two-tiered standard for determining whether to enter a summary judgment. In order to enter a summary judgment, the trial court must determine: l) that there is no genuine issue of material fact, [*8] and 2) that the moving party is entitled to a judgment as a matter of law. In determining whether a summary judgment was properly entered, the reviewing court must view the evidence in a light most favorable to the nonmovant. See Turner v. Systems Fuel, Inc., 475 So. 2d 539, 541 (Ala. l985); Ryan v. Charles Townsend Ford, Inc., 409 So. 2d 784 (Ala. l981).

Rule 56 is read in conjunction with the "substantial evidence rule" (§ 12-21-12, Ala. Code 1975), for actions filed after June 11, 1987.

See Bass v. South Trust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). To defeat a properly supported motion for summary judgment, the opposing party must present "substantial evidence," i.e., "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989).

The purpose of the NMHCSSA is to ensure manufactured home safety, including safety during transportation of manufactured homes. Scurlock v. City of Lynn Haven, Fla., 858 F.2d 1521, 1524 (11th Cir. 1988) (citing 42 U.S.C. § 5401). [*9] To accomplish this goal, HUD promulgated 24 C.F.R. §§ 3280-3282, applicable to builders of manufactured homes. To sell and transport a manufactured home within the United States, the manufacturer must have on the home a HUD label certifying compliance with the federal standards. Such a label may be affixed to a manufactured home only if the design is approved by a DAPIA.

In this case, PFS Corporation, a HUD-licensed DAPIA, reviewed and approved -- as in compliance -- the design of the manufactured home involved in the accident that resulted in Turner's injuries. The braking system in this design included only one braking axle on the manufactured home. The defendant PFS's approval of the design was based solely upon a one-paragraph transportation letter written by the manufacturer, Mays Enterprises. Turner alleged that this design failed to comply with the federal standards and that PFS had negligently or wantonly certified this design, which he alleges caused his injuries. The trial court held that HUD regulations required PFS to accept this one-paragraph letter n5 as "documented evidence" proving compliance with the HUD safety standards, and it accordingly entered a summary judgment. [*10]

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n5 The letter stated:
"This is to certify that all mobile homes manufactured by this company and submitted to [PFS] for approval have been subjected

to transportation experience since starting date of Oct. 1984. The chassis system incorporated in the construction manual has not experienced latent damage to structural, plumbing, mechanical, or electrical systems that would exceed the 1% maximum allowance as allowed in section 3280.903 of the standards. Documented evidence of service and repair records are available for inspection."

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - -

In opposing the defendant's summary judgment motion, Turner submitted the affidavit of engineer Harry Edmondson. Edmondson stated his opinion that PFS, in basing its approval of the one braking-axle design on nothing but this short letter from the manufacturer, had breached its duty to ensure compliance. Federal standards regarding the adequacy of the braking system are set forth in 24 C.F.R. § 3280.904(a) and (b)(9):
§ 3280.904(a):

"In operation, [*11] the transportation system (supporting the manufactured home structure and its contents) shall effectively respond to the control of the braking, while traveling at applicable towing vehicle in terms of tracking and highway speeds and in normal highway traffic conditions [sic]."
§ 3280.904(b)(9):

"Brake assemblies. (i) The number, type, size and design of brake assemblies required to assist the towing vehicle in providing effective control and stopping of the manufactured home shall be determined and documented by engineering analysis. Those alternatives listed in § 3280.903(c) may be accepted in place of such an analysis."

Section 3280.903(c)(2) provides that "acceptable documented evidence of actual transportation experience" may be accepted in place of the engineering analysis. The standards do not prohibit the DAPIA from inquiring further into the effectiveness of the system, contrary to PFS's contention that it legally could do no more to ensure the safety of the design. Additionally, for a DAPIA to approve a system using one braking axle, § 3280.904(a) requires that that braking axle be effective under normal conditions.

For interpreting [*12] § 3280.903(c)(2) and § 3280.904(b)(9), paragraphs A and E of HUD's interpretative bulletin provide: Paragraph A, regarding § 3280.903(c)(2):

"Documented evidence such as service records or other documents certified to by duly authorized personnel of the manufacturer is acceptable for compliance with this section when failures related to chassis damage . . . and body failure due to transportation loading do not exceed 1% of the total number of units ('Floors') transported upon that chassis. Latent damage failures . . . resulting from primary or secondary movement, which are not related to improper siting or leveling of the mobile home or loading in excess of the manufacturer's recommendations during transport of the mobile home, shall be included in determining the 1% maximum failure level. If the manufacturer does not have or cannot provide actual records of latent damage history, the manufacturer shall provide a testament that, to the manufacturer's knowledge, no latent damage has occurred as a result of transportation. [Emphasis added.]"
Paragraph E, regarding § 3280.904(b)(9):

"Unless substantiated in the design to the satisfaction of the approval [*13] agency by either engineering analysis or those alternatives listed in 3280.903(c)(1) and (2), there shall be a minimum of two axles equipped with brake assemblies on each mobile home floor or unit. Whenever tests are used to verify the adequacy of the combined braking performance of the towing vehicle and the mobile home, the combined braking system shall be capable of assuring that the maximum stopping distance from an initial velocity of 20 mph does not exceed 40 feet. The stopping distance shall be measured from the point at which movement of the service brake pedal or control begins. [Emphasis added.]"

This bulletin makes it clear that the DAPIA still has discretion to require more than a self-serving statement by the manufacturer concerning compliance with federal safety standards. In no way is the requirement of effective braking under normal conditions changed by this bulletin.

In this case, the letter stated that service and repair records were available for inspection. PFS, however, apparently did not seek access to these records. Further, the letter itself did not substantiate that the braking system could stop the manufactured home safely under normal conditions. [*14]

Contrary to the allegations of the defendant, the standards and the bulletin required more than one braking axle unless the DAPIA could ascertain that the design could effectively respond to braking under normal conditions without two braking axles. The availability of the letter option for the manufacturer does not require the DAPIA to look no further into the safety of the design. Rather, the bulletin and the standards indicate that engineering analysis need not be repeated where the manufacturer can substantiate that such an analysis is unnecessary. The analysis would be unnecessary only if the design could be shown to comply with safety standards.

Turner's expert attested that the braking capacity of the manufactured home in question was one-seventh of that of an automobile, one-fifth of that of a tractor trailer, and one-fourth of what is required to operate vehicles on Alabama highways. The letter upon which PFS relied in approving the design did not substantiate the effectiveness of the braking system. Turner presented substantial evidence that would allow the inference that the braking system was in fact unsafe and that PFS had not satisfied its duty to ensure compliance [*15] with HUD safety regulations. PFS was not entitled to a summary judgment. Turner must be permitted to prove the claims.

We therefore hold (1) that Turner's state tort claims are not preempted, and (2) that his allegations of negligence or wantonness raise factual questions within the province of a jury. REVERSED AND REMANDED.

Almon, Ingram, Cook, and Butts, JJ., concur.
Maddox, J., dissents.

DISSENT BY: MADDOX

DISSENT: MADDOX, JUSTICE (dissenting).

The sole issue on this appeal is whether the doctrine of federal preemption applies to the plaintiff's claim that he was injured because of the faulty design and manufacture of a mobile home that was certified as meeting all of the requirements of the HUD regulations and requirements. The trial court held that the plaintiff's state law tort claims against the defendant were subject to federal preemption, and it entered a summary judgment in favor of PFS. Because I believe the trial court's holding was correct, I must respectfully dissent. The plaintiff's main argument on appeal is that his state tort claim is not preempted, because, he argues, "pre-emption will not lie unless it is the 'clear and manifest purpose of Congress.'"

PFS, [*16] on the other hand, argues that the trial court correctly granted its motion for summary judgment on the basis that the plaintiff's claims were preempted by federal law, because, PFS says, "the statutory framework for manufactured housing pre-empts state or common law rules for liability that are not identical to the federal standard." PFS contends that in order for Turner to prevail, he must establish that it could or should have exercised its own independent engineering analysis in order to ascertain whether it should require greater braking capacity than was required in the HUD regulations. PFS argues that Turner cannot support his cause of action, because what he argues PFS should have done would conflict with HUD standards that PFS says preempt any state or local rules. PFS argues that this is true even if another design might arguably be safer.

The sections pertinent to this case are 24 C.F.R. § 3280.904 (b)(9) and § 3280.903(c). Section 3280.904(b)(9) reads as follows:

"(9) Brake Assemblies. (i) The number, type, size and design of brake assemblies required to assist the towing vehicle in providing effective control and stopping of the manufactured home shall be determined [*17] and documented by engineering analysis. Those alternatives listed in 3280.903(c) may be accepted in place of such an analysis."

Section 3280.903(c) provides:

"In place of an engineering analysis, either of the following may be accepted: (1) Documented technical data of suitable highway tests which were conducted to simulate transportation loads and conditions; or (2) acceptable documented evidence of actual transportation experience which meets the intent of this subpart."

The language of the applicable regulation in this case is unambiguous; thus, the expressed intent of Congress must be given effect by the court. See Tuscaloosa County Commission v. Deputy Sheriffs' Association of Tuscaloosa County, 589 So. 2d 687 (Ala. 1991). Transportation experience is an acceptable method for Mays to demonstrate to PFS that it is in compliance with the regulation. Mays, according to the regulation, may use its own certification of transportation experience to meet this requirement.

Turner, on appeal from the summary judgment, argues that PFS erroneously relied on a letter from Mays that was not an acceptable document of actual transportation experience. The trial [*18] court found, however, that Mays had sufficiently certified in a letter that in transporting manufactured housing it had "not experienced latent damage to structural, plumbing, mechanical, or electrical systems that would exceed the 1% maximum allowance in § 280.903 of the standards."

The trial court stated, "PFS had no responsibility for incorporating any safety device or feature into the axle described in Turner's complaint because there is no such responsibility defined in the PFS-Mays contract or in the applicable HUD regulations." PFS argues that "the plaintiff cannot support [his] cause of action against PFS because the Mays Home and the PFS certification of that home to the HUD standards preempts any State or local rules in conflict with that regulation" and that "this is true even if another design might arguably be safer," citing Welsh v. Century Products, Inc., 745 F. Supp. 313, 315 (D. Md. 1990). Welsh sets out three circumstances calling for a finding of federal preemption:

"First, the federal statute may, by its terms, explicitly preempt state law. Second, the federal statute may implicitly preempt state law by so pervasively regulating a given subject [*19] matter that 'the intent to occupy [the] ... field to the exclusion of state law' is apparent. Third, the federal statute may implicitly preempt state law if the state law 'actually conflicts' with the federal law."

The federal statute involved in this case explicitly preempts state law. Section 3282.11, "Preemption and Reciprocity," part of the Manufactured Home and Procedural and Enforcement Regulations, as codified in 24 C.F.R. 3282, provides in part:"
§ 3282.11 Preemption and Reciprocity

"(a) No state manufactured home standard regarding manufactured home construction and safety which covers aspects of the manufactured home governed by the Federal standards shall be established or continue in effect with respect to manufactured homes subject to the Federal standards and these regulations unless it is identical to the Federal standards.".... "(e) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be [*20] enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act." n6

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n6 Section 3282.11 is quoted here as it read at the time of Turner's accident. Because of amendments made in 1991, paragraph (e) now appears in paragraph (d).
- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - -

Turner seeks to avoid the force of these provisions by arguing that he has made no claims concerning any state standards regarding manufactured homes, but has grounded his negligence claim on his allegation that PFS's certification gives rise to a common law tort.

He claims, therefore, that his action is not preempted. I find no merit in this argument.

Federal preemption occurs whether the state action is in the form of a statute, an administrative regulation, or a judicial decision based on tort law. In San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 247, 3 L. Ed. 2d 775, 79 S. Ct. 773 (1959), the Supreme Court stated:

"Regulation can be as effectively exerted through an award of damages as through some form of [*21] preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy. Even the States' salutary effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme."

I believe the trial judge correctly held that the "allegations set forth in the plaintiffs' complaint attempt to place greater safety requirements upon the PFS inspection and certification process than those imposed under the federal regulations." Congress explicitly preempted state action to regulate the design and transportation of manufactured homes. The clear and unambiguous language of § 3282.11 prohibits the State's establishment, by judicial decision or otherwise, of a stricter standard for the transportation of manufactured homes. Thus, Turner's claims are preempted by federal law.

Based on the foregoing, I believe that the summary judgment in favor of the defendant is due to be affirmed. I must respectfully dissent.

IN THE SUPREME COURT OF ALABAMA
February 16, 1996

1931169

Kenneth B. Turner v. PFS Corporation, (Etowah: CV-89-262)

NOTICE

The application for rehearing filed in this cause is overruled. No opinion written on rehearing.

SHORES, J. - Almon, Ingram, Cook and Butts, JJ., concur; Hooper, CJ., and Maddox, J., dissent.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as, same appear(s) of record in said Court.
Witness my hand this 16 day of Feb., 1996.

- /s/Robert G. Esdale

Clerk, Supreme Court of Alabama

INTERPRETATIVE BULLETIN J-1-76
TRANSPORTATION - SUBPART J OF PART 3280

A. SECTION 3280.903(c)(2) GENERAL REQUIREMENTS FOR DESIGNING THE STRUCTURE TO WITHSTAND TRANSPORTATION, SHOCK AND VIBRATION.

Documented evidence such as service records or other documents certified to by duly authorized personnel of the manufacturer is acceptable for compliance with this section when failures related to chassis damage (e.g., frame or drawbar damage, running gear failure, etc.) and body failure due to transportation loading do not exceed 1% of the total number of units ("floors") transported upon that chassis. Latent damage failures (e.g., racked windows and doors, floor misalignment, etc.) resulting from primary or secondary movement, which are not related to improper siting or leveling of the mobile home or loading in excess of the manufacturer's recommendations during transport of the mobile home, shall be included in determining the 1% maximum failure level. If the manufacturer does not have or cannot provide actual records of latent damage history, the manufacturer shall provide a statement that, to the manufacturer's knowledge, no latent damage has occurred as a result of transportation.